

COMMONWEALTH OF KENTUCKY
BEFORE THE UTILITY REGULATORY COMMISSION

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IN THE MATTER OF:

NOTICE OF APPLICATION OF FERN LAKE COMPANY)

NOTICE OF FERN LAKE COMPANY PURSUANT TO)
KRS 278.180, 278.190 AND RELATED STATUTES)
AND 807 KAR 25:010, SECTION 5 THROUGH 9, AND)
RELATED SECTIONS, THAT ON DECEMBER 1, 1980,)
FERN LAKE COMPANY WILL PLACE INTO EFFECT A)
TARIFF INCREASING THE WHOLESALE COST OF)
WATER TO KENTUCKY WATER SERVICE COMPANY, INC.)

APPLICATION FOR FOLLOWING:)

1. ORDER PLACING INTO EFFECT THE NEW)
TARIFF ADJUSTING ITS WHOLESALE RATES)
TO ITS SOLE CUSTOMER, KENTUCKY WATER)
SERVICE COMPANY, INC.)

CASE NO. 7982

2. APPLICATION FOR AUTHORITY TO BORROW)
THE SUM OF \$1,700,000 FROM THE CITY)
OF MIDDLESBORO, KENTUCKY TO PERFORM)
REMEDIAL WORK REQUIRED BY THE BUREAU)
OF NATURAL RESOURCES, ON FERN LAKE)
COMPANY'S LAKE AND DAM IN MIDDLESBORO,)
KENTUCKY, AND TO AMORTIZE THE LOAN BY)
INCLUDING IN THE TARIFF A SURCHARGE)
ENTAILED AND ENCUMBERED FOR THE SPECIFIC)
PURPOSE OF THE DEBT SERVICE APPLIED FOR)
HEREIN)

I N T E R I M O R D E R

Preface

On September 29, 1980, the Fern Lake Company ("Applicant") filed with this Commission its application for: (1) certification of its proposed remedial construction work for the Fern Lake Dam, (2) authority to borrow \$1,700,000 to finance said construction, (3) approval to place into effect the surcharge necessary to amortize the loan applied for herein, and (4) an increase of approximately \$50,000 in its general rate for water sold to its sole customer, Kentucky Water Service Company, Inc. Said application included a notice of intent to implement the proposed rate on December 1, 1980. The Commission, in order to consider the reasonableness of the proposed rate ordered its suspension for the five (5) month period ending April 1, 1980.

This matter was set for hearing at the Commission's office in Frankfort, Kentucky on December 16, 1980 to consider the construction, financing and surcharge portions of the application. All parties of interest were notified of the hearing. The Division of Consumer Intervention of the Attorney General's office and the aforementioned company are the intervenors of record in this matter.

At the hearing, Kentucky Water Service Company, Inc. moved the Commission for approval in the instant case of a surcharge rate clause to pass through to its customers in Middlesboro and environs any increases in the charges now being paid to the Applicant. In the alternative, Kentucky Water Service moved that the surcharge matter be assigned a case number and processed as a companion case to the instant proceeding.

The Attorney General's Division of Consumer Intervention objected to the motion on the ground that to sustain the motion would be improper procedurally as it would be the equivalent of approving a rate increase without proper application or full and complete public notice. The Commission concurs. The Commission finds, however, that the method proposed in the alternative motion would be proper procedurally and would provide Kentucky Water Service the best opportunity to recover through its rate structures any surcharges imposed upon it by Fern Lake. Accordingly, the motion for a surcharge rate clause in this proceeding is hereby denied. This Commission, however, hereby sustains the alternative motion and directs the Secretary to immediately assign a number to Kentucky Water Service Company's application. Such case will be treated, so far as possible, as a companion or parallel case, as soon as Notice to Kentucky Water Service's customers can be accomplished.

The record in this matter is now considered to be adequately submitted for making the determinations set forth herein. The record, however, will remain open for the receipt of the additional information herein ordered to be filed and for the Commission's final actions in this matter.

The Proposed Construction

The plans and specifications for the proposed construction have been reviewed and approved by the Division of Water Resources of the Kentucky Department for Natural Resources and Environmental Protection.⁽¹⁾ These and other documents included in the application delineate the purpose and scope of the proposed construction which includes: (1) Clearing the downstream face of the dam and constructing additional compacted earth thereon as an integral part of the dam; (2) extending the downstream end of the low level outlet culvert to accommodate the additional dam width; (3) improvements to the inlet tower; (4) a new and larger spillway of reinforced concrete; (5) a new two-lane spillway bridge of reinforced concrete; (6) a two-lane asphalt surfaced roadway across the top of the dam and (7) other miscellaneous improvements. The low bid for this work is \$1,362,000. This proposed construction, according to the testimony of David H. Rosenbaum, former Director of the Division of Water Resources, Kentucky Department of Natural Resources and Environmental Protection, is the minimum scope of work required for compliance with current dam safety standards as set forth in KRS 151.⁽²⁾

The scope of the proposed construction has been established and the Applicant's plans and specifications delineating the said construction have been approved by execution of the lawful authority of state and federal agencies outside of the purview of the Commission. The dam is utility property essential to the health and welfare of residents of the area due to its impoundment of a source of water for said residents. The Commission, therefore, FINDS that public convenience and necessity requires that the proposed construction be accomplished by the Applicant.

Additional aspects of the construction regarding the exclusion of property referred to herein as non-utility property must be considered. The existing one-lane roadway across the

(1) Approval letter and Construction Permit dated May 21, 1980 and filed December 16, 1980 as Applicant's Exhibit 2.

(2) T. E. of December 16, 1980, pages 34-38.

dam has been adequate for utility purposes. Therefore, no more than the newly constructed value of a one-lane bridge and roadway should be considered as utility property for rate-making purposes. The Applicant must, therefore, provide the additional information essential to an assessment of the value of the second lane of the said bridge and roadway as non-utility property. The Commission does not object to the Applicant's construction of the two-lane bridge and roadway, but FINDS that the Applicant's stockholders, not its customers, should bear the cost of this non-utility property as well as the interest cost associated with debt incurred to construct this property; and the value of said property should be shown on the Applicant's books in compliance with the Commission's findings and final determination of value in this matter.

The Proposed Borrowing and Surcharge

The City of Middlesboro, Kentucky has agreed to issue Industrial Building Revenue Bonds in the amount of \$1,700,000, the proceeds of which will be loaned to Fern Lake by the City of Middlesboro, to finance the proposed construction and to repay a loan to the First Security National Bank of Lexington, which was authorized in Case No. 7292.

In order to repay the funds, the Applicant proposed to make a part of its tariff a surcharge in an amount sufficient to amortize the debt, including interest at a rate not to exceed twelve (12) percent per annum and costs, over a period of twenty (20) years. The proposed surcharge would remain in effect until such time as the indebtedness is fully amortized, and would automatically cease as of that date. No part of the proceeds of the surcharge would be utilized for any purpose other than the amortization of the proposed borrowing; and the proceeds would be remitted on a monthly basis to the trustee as set forth in the bond indenture trust and other documents attached thereto.

The Commission, after consideration of the evidence of record and being advised is of the opinion and FINDS that:

(1) The borrowing of \$1,700,000 from the City of Middleboro under a financing arrangement authorized by KRS 103.200 to 103.285, inclusive, and at an interest rate not to exceed twelve (12) percent per annum is for a lawful object within the corporate purposes of the utility, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

(2) Fern Lake Company's revenues are insufficient to service this proposed borrowing.

(3) The proposed surcharge is the most appropriate method of servicing the proposed borrowing as was clearly set out in the Commission's Order in Case No. 7292

"...it makes little difference whether the funds to service the debt are raised by means of increasing rates or by placing into effect a surcharge as both will result in the same effect to the ultimate consumer. However, as a surcharge can be placed into effect for a limited period of time, and its use can be restricted to the sole purpose of servicing the debt, we are of the opinion that in this instance, a surcharge would be in the best interest."

(4) The monies derived from the implementation of the proposed surcharge shall be set up separately on the books of the Applicant and shown in the Annual Report to this Commission.

Summary

The Commission, on the basis of the matters that have been set forth herein and the evidentiary record in this matter:

HEREBY ORDERS that the Applicant be and is hereby granted a Certificate of Public Convenience and Necessity for the proposed remedial construction in accordance with the plans and specifications filed in this record and the \$1,362,000 contractor's bid for completion of the said construction.

IT IS FURTHER ORDERED that:

(1) Neither the value of new construction of more than a one-lane bridge and roadway across the top of the dam nor the interest cost on the debt incurred to construct this property shall be considered when setting rates for Fern Lake. Further, that the Applicant shall file with this Commission the information essential to fair assessment of the value of this non-utility property.

(2) Fern Lake Company be and it hereby is authorized to borrow \$1,700,000 from the City of Middlesboro, Kentucky, under the terms and conditions set forth in the application and record, at an interest rate not to exceed twelve (12) percent per annum.

(3) The proceeds from the borrowing authorized herein shall be used only for the lawful objects as set out in the application and record.

(4) Fern Lake Company shall, as soon as reasonably possible, file with this Commission a statement setting forth the date of the borrowing authorized herein, the exact interest rate and all fees and expenses involved in the borrowing.

(5) Fern Lake Company is hereby authorized to place into effect a monthly surcharge; the monies from which are to be used solely for the purpose of servicing the loan authorized herein. This surcharge, which shall be placed into effect the first billing rendered after the date of the borrowing, shall terminate upon repayment of the indebtedness.

(6) The Applicant's current monthly surcharge of \$1,793.40 authorized in Case No. 7292 shall simultaneously cease with the implementation of the surcharge approved herein.

(7) The Applicant is to establish and maintain a separate account in accordance with Finding Number Four.

(8) Nothing contained herein shall prevent the Commission from issuing further Orders in this matter in the event the proceedings in this case shall be terminated by final Order and/or otherwise prior to the termination of the five month period of suspension.

Done at Frankfort, Kentucky this the 27th day of February,
1981.

Did not participate.
Chairman

Commissioner

Secretary